



INDUSTRIAL PRETREATMENT ENFORCEMENT RESPONSE PLAN AND PENALTY POLICY

In accordance with 40 CFR 403.8(f)(5) and pursuant to Tempe City Code Section 27-95 the Water Utilities Department has developed this Enforcement Response Plan (ERP). Tempe City Code Chapter 27 authorizes the Water Utilities Manager to regulate and enforce Publicly Owned Treatment Works (POTW) user compliance. This document describes the procedures for the City of Tempe's response to instances of industrial user noncompliance.

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PURPOSE

These guidelines and penalties were developed based on the following documents: Environmental Protection Agency (EPA) Pretreatment Compliance Monitoring and Enforcement Guidance (July 1986); Guidance for Developing Control Authority Enforcement Response Plans (September 1989); Enforcement Response Plan Workshop by S.A.I.C. (August 1990).

40 CFR 403.8(f)(5) requires that the plan include the following information:

- Describe how the POTW will investigate instances of noncompliance.
- Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place.
- Identify (by title) the official(s) responsible for each type of response.
- Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8 (f)(1) and (f)(2).

This plan is intended to serve three main purposes:

- To provide guidance in enforcement responses that are appropriate in relation to the nature and severity of the violation and the overall degree of noncompliance.
- To establish guidelines that encourage fair and uniform application of enforcement responses to comparable levels and types of violations.
- As a mechanism to review the appropriateness of responses.

This plan is intended to be used as a reference tool to address instances of noncompliance. It must be used in conjunction with the Code of Federal Regulations and the Tempe City Code. This plan does not supersede legal requirements, but serves as guidance for applying existing laws and regulations. Appendices located in the back of this plan are intended to assist in assessing fair and uniform enforcement.

General Responsibilities

The purpose of this section is to establish general responsibilities for enforcement activities initiated by the City personnel. It is the intention of the Environmental Services Division to move quickly and responsibly in all enforcement actions. The following guidelines will help ensure that issues requiring enforcement are handled fairly and uniformly for all industrial users.

Environmental Investigators/Inspectors

Investigators/Inspectors will be responsible for conducting compliance monitoring and facility inspections. Investigators/Inspectors will:

- Conduct outreach and educational activities with users
- Screen compliance monitoring data
- Determine compliance with permit conditions through on-site inspections and prepare inspection reports
- Identify instances of noncompliance
- Promptly notify the Environmental Services Administrator of noncompliance
- Draft Informal Notices of Noncompliance
- Draft Notices of Violation (NOV) in consultation with Environmental Services Administrator
- Assist Environmental Services Administrator and City Attorney in drafting administrative orders
- Develop compliance sampling schedules
- Provide compliance assistance as appropriate

The Inspector may also participate in Show Cause Hearings and Compliance Hearings as deemed necessary by the Environmental Services Administrator.

Environmental Services Administrator

The Administrator will be responsible for ensuring fair and consistent implementation of pretreatment requirements and ensuring that pretreatment activities are in compliance with conditions of the NPDES permit. The Administrator will:

- Review all violations
- Review all documents drafted by Inspectors
- Recommend appropriate response(s) to noncompliance
- Promptly notify the Water Utilities Manager of significant noncompliance
- Conduct compliance meetings
- Develop and oversee compliance monitoring schedules
- Track enforcement response times
- Approve compliance sampling schedules
- Ensure consistency of the pretreatment program
- Initiate Administrative Orders and Compliance Schedules

Enforcement Response Plan

- Initiate termination of service
- Consult with City Attorney on potential legal action and decisions to issue orders
- Assess penalties for noncompliance upon approval by the Water Utilities Manager
- Sign Notices of Violation
- Sign Industrial Wastewater Discharge Permits
- Sign Administrative Orders

Water Utilities Manager

The Water Utilities Manager will be responsible for the appropriate application of enforcement guidelines to pretreatment violations. The Water Utilities Manager will:

- Conduct Show Cause Hearings
- Approve assessment of administrative penalties
- Approve termination of water or wastewater services
- Implement enforcement responsibilities in Tempe City Code, Chapter 27

City Attorney

The City Attorney's office will:

- Provide assistance and advice on legal/regulatory pretreatment developments or changes
- Advise City staff during enforcement matters as required
- Consult with Environmental Services Administrator on administrative actions and review administrative orders issued by Administrator
- Manage civil and criminal litigation on behalf of the City

Response Times and Appropriate Response

After the instance of noncompliance has been investigated and determined to be valid the Environmental Services Division will initiate enforcement action.

Response Times

Once noncompliance is determined, the enforcement action must be taken in a timely manner. It is important to remember that to be effective and fair, enforcement actions must be taken quickly. By acting quickly, the instance of noncompliance is easier to address and future noncompliance may be lessened. The City will attempt to initiate all enforcement actions within thirty (30) days of the date the noncompliance is determined valid.

Selecting Appropriate Response

Noncompliance identified as a result of monitoring, reporting, and assessing treatment requirements may range from minor incidents to major incidents. Each instance of noncompliance must be reviewed, documented, and properly addressed. The appropriate enforcement response will relate to the severity and duration of the violation, compliance history, good faith efforts of the violator to comply, harm caused by the violation, and whether the noncompliance resulted in a discharge permit violation.

The following subsections address these factors.

Duration of the Violation

The City must evaluate the duration of the violation to determine the possible effects that may have occurred in the collection system and publicly owned treatment works (POTW). The assessment of each specific violation should take into account the volume of the discharge and the strength of the discharge.

Compliance History

The compliance history of the facility is one of the most important factors to review prior to selecting the appropriate level of enforcement response. More aggressive enforcement actions should be taken when a facility has frequent violations. When an isolated violation occurs, the compliance history of the facility will be taken into account. The City must also consider the effectiveness of previous enforcement actions before establishing the level of the next response.

Apparent Good Faith

Congress expressed what is expected of a facility attempting to establish good faith efforts:

“The Act requires industry to take extraordinary efforts if the vital and ambitious goals of the Congress are to be met. This means that business as usual is not enough. Prompt, vigorous, and in many cases, expensive pollution control measures must be initiated and completed as promptly as possible. In assessing the good faith of a discharger, the discharger is to be judged against these criteria. Moreover, it is an established principle, which applies to this act, that administrative and judicial review are sought on the discharge’s own time.”

(Legislative History of the Clean Water Act No. 95-14, Vol. 3 p. 463)

Based on this guidance, the City of Tempe will interpret the actions of a facility on a case by case basis. If a facility challenges a permit, contract, or applicable pretreatment standard and delays progress towards compliance, the facility assumes the risk that the permit, contract, or standard will be upheld on judicial review. If a facility begins aggressively to come into compliance only after a decision is made adverse to its interests, it cannot be considered to have acted in good faith. Likewise, if a facility follows business as usual procedures after enforcement action has been initiated it cannot be considered to have acted in good faith.

If measured against the Congressional standard, a facility appears to be acting in good faith to comply, the City may choose a lower level enforcement response than one it would choose against a facility not acting in good faith.

Discharge Permit Violation

An instance of noncompliance that causes interference or pass-through of the POTW and results in a permit violation must be addressed with formal enforcement actions and penalties. This level of response is necessary to ensure that adequate treatment and compliance is achieved promptly. Enforcement actions may include injunctive measures in appropriate cases.

Severity of Violation

Depending on its severity, even an isolated violation could threaten public health and the environment, damage public and private property, or threaten the integrity of the program. Factors like a pH of 2 vs pH of 5, 100 gallons vs 100,000 gallons, 5% over the limit vs 200 % over the limit, failure to accurately report a violation, reports 2 days late vs 30 days late, affect the severity of the violation.

Harm Caused

Some violations may have negative impacts on the POTW itself. For example, they may result in significant increases in treatment costs, interfere with operations, or harm POTW personnel or equipment, or cause sludge contamination resulting in increased disposal costs. These violations should be met with an administrative fine or civil penalty and an order to correct the violation, in addition to recovery of costs.

Enforcement Actions

In order to achieve a maximum degree of compliance by industrial users, the City of Tempe uses a wide range of enforcement actions. As identified in the previous sections there are several factors that should be reviewed prior to selecting the appropriate level of response. Enforcement actions available range from a simple telephone call to assessment of monetary penalties and termination of service. During the course of reviewing a specific violation, it is important to remember that some intentional violations may constitute criminal activities and under such circumstances the Environmental Services Division will consult the Tempe City Attorney's Office, and may seek assistance from the U.S. Environmental Protection Agency (EPA), Arizona Department of Environmental Quality (ADEQ), and/or the Arizona Attorney General's Office.

The City of Tempe staff must have a progressive enforcement philosophy that addresses the violation at the lowest level with the least formality possible, beginning with compliance assistance. The goal is to achieve compliance for the facilities in question. All actions, no matter how informal, must be documented in writing and submitted to the Environmental Services Administrator for approval. All written notices of enforcement actions will be sent by certified mail with a return receipt requested. Listed below are the levels of enforcement actions available ranging from informal to formal.

Actions

- Compliance Assistance (advising on achieving compliance)
- Unannounced inspections or unscheduled monitoring
- Informal Notice (warning)
- Automatic Increase of Self-Monitoring
- Notice of Violation (NOV)
- Order to Show Cause
- Administrative Order
- Administrative Fines and Reimbursements of Costs
- Termination or Suspension of Discharge
- Civil Action
- Criminal Action
- Suspension or Revocation of Permit

The following subsections describe the individual actions listed above. Appendix A provides a general guide to the use and implementation of these actions.

Actions

Compliance Assistance

The environmental investigators/inspectors will assist any industry in achieving compliance with the pretreatment regulations. The assistance may include, but is not limited to, providing copies of the federal regulations applicable to the industry, assistance with the application, audit of the facility, or identifying other similar business in Tempe.

Unscheduled Inspection or Monitoring

When permit or effluent violations occur, the City of Tempe will make every effort to perform an inspection. The purpose of an inspection is to determine if the violation has been corrected and to determine if the facility is operating normally. Little if any prior notice is given to the facility.

Informal Notice

Informal notice may consist of a telephone call or “reminder” letter to an appropriate plant official. Such a call or letter may be used to notify officials of a minor violation, to seek an explanation, to suggest the exercise of more due care, and/or to notify the violator that subsequent violations of the same type may be dealt with more severely. Such informal notice may be used to correct minor inadvertent noncompliance and to demonstrate that the City will note and follow-up all instances of noncompliance. The City will place a copy of the Informal Notice in the industry’s file.

In these instances the City will specify the type of follow-up actions required of the facility. The City will also establish the specific time frame in which the facility must respond.

Automatic Increase of Self Monitoring

If the results of the permittee's self-monitoring indicate a violation has occurred, the permittee must repeat the sampling and pollutant analysis and submit, in writing, the results of this second analysis within 30 days of becoming aware of the violation.

The permittee shall conduct a minimum of four consecutive days of monitoring. All monitoring shall be representative of the permittee’s flow and consistent with all conditions of the facility’s Industrial Wastewater Discharge Permit.

The Permittee is not required to resample if the City obtained a sample at the same discharge point for the same pollutant between the time the Permittee performed its sampling and the time the Permittee receives the results of sampling. If the facility in question is a “batch” discharge operation, the City of Tempe will establish the specific monitoring requirements on a case-by-case basis.

Notice of Violation (NOV)

This is a written notice to the facility that a violation has occurred. The NOV will require corrective actions to prevent further violations and will require the facility to explain the causes of the violation. The text of the NOV will include a statement that additional enforcement actions may be pursued if corrective actions are not achieved as required. Additionally, the NOV does not excuse prior violations nor prevent collection of penalties or damages at a later time. The NOV will be sent by certified mail with return receipt requested. Copies will be placed in the industry's file with the return receipt as proof that the industry received the notice in the event that additional enforcement proceedings are necessary.

The NOV will identify the specific time frame for follow-up and/or other corrective actions. The facility is required to respond in writing within this specific time frame. Upon review of the facility's response to the NOV, the Environmental Services Administrator will determine the validity of the response. If the response is determined to be unsatisfactory, further actions may be taken. If the response is determined to be sufficient, the NOV will be closed and recorded in the facility file in Environmental Services Division as part of compliance history. Closure will be documented in writing and provided to the facility. However, closure of the NOV does not preclude further action if necessary.

Order to Show Cause

An Order to Show Cause why a proposed enforcement action should not be taken may be issued to a facility before proceeding with enforcement actions. Notice will be served upon the facility indicating the time and place the show cause meeting will be conducted. The notice will identify the purpose, enforcement action, the reasons for said action, and a request that the industrial user show cause why the proposed action should not be taken. A show cause hearing does not preclude, and is not a necessary prerequisite for taking other enforcement actions.

Administrative Order (AO)

The City may issue an Administrative Order requiring a facility to achieve compliance with pretreatment standards or other requirements of the Tempe City Code. The administrative order will place a facility on an enforceable compliance schedule or require immediate compliance. The City may require a facility to install treatment device(s) and/or to operate and maintain a treatment facility correctly.

Administrative Fines

Administrative Fines may be assessed by the Water Utilities Manager under Tempe City Code Section 27-91. Each day that a violation continues may constitute a separate violation. When determining the amount of an administrative fine the factors discussed on pages 5 and 6 will be taken into account, as well as any economic benefit resulting from the violation, the economic impact of the penalty on the violator, the seriousness of the violation, and other factors as justice requires.

Termination or Suspension of Discharge

The City has the authority to immediately halt any actual or threatened discharge to the POTW that may represent an endangerment to public health or the POTW (Tempe City Code, Chapter 27, Section 27-92). Informal notification may be given to the facility discharging or threatening such a discharge.

Termination or suspension of discharge may be an appropriate response to facilities that have not complied with previous enforcement actions. This action is an administrative response, which may be implemented by the Water Utilities Department without initiating civil and/or criminal proceedings.

Circumstances warranting termination of discharge are as follows:

- Unpermitted discharge(s) which result in a violation of any NPDES Permit, Aquifer Protection Permit, Reuse/Storage Permit, or any other environmental permit issued to Tempe or other agencies receiving Tempe wastewater or its by-products.
- Any dangerous situation threatening human health, the environment, or the POTW.
- Discharge(s) that exceed local limits or categorical discharge limits or result in damage to the environment or the POTW.
- Slug Load resulting in interference, pass through, or which may cause any dangerous situation threatening human health, the environment, or the POTW.
- Recurring slug load discharges.
- Failure of the facility to notify Tempe of effluent violations of slug load discharge that causes any dangerous situation threatening human health, the environment, or the POTW.
- Failure of the facility to monitor as required by an administrative action or permit.
- Failure of the facility to install required monitoring equipment as required by an administrative order.
- Major violation of a permit condition or administrative action accompanied by evidence of negligence or intentional violation.

The process for terminating or suspending a facility's discharge should be initiated and carried out as follows:

- The Environmental Services Administrator prepares documentation to support the action and advises the Water Utilities Manager of the impending action.

Enforcement Response Plan

- Upon approval by the Water Utilities Manager, the industrial user is provided written notification of the proposed termination. The user will be given the opportunity to appear before the Water Utilities Manager to show cause why the proposed action should not be taken.
- If the facility appears to have an actual or threatened discharge that may cause interference with the POTW or will present an imminent endangerment to the health or welfare of any person or the environment, the Water Utilities Manager may suspend any sewer service connection to the POTW without a show cause hearing.

Service will be restored only after compliance has been achieved to the satisfaction of the Water Utilities Manager. The fines imposed by Tempe City Code, Chapter 27, in addition to any damages incurred, must be paid before the service connection is restored.

Civil Actions

The City of Tempe has the authority to file a civil suit against alleged violators of applicable pretreatment standards seeking injunctive relief, compliance, civil penalties, and/or damages (Tempe City Code, Chapter 27, Section 27-102). Civil penalties may be assessed in an amount up to \$25,000 per violation per day in accordance with A.R.S. §49-391. This type of response is appropriate in the following situations:

- An emergency situation where injunctive relief is necessary to halt or prevent discharges which threaten human health, or the environment, or interfere with the POTW.
- When efforts to restore compliance through cooperation with the facility have failed and action is necessary to enforce pretreatment program requirements.
- To seek monetary penalties for violations.

In instances that require filing a civil suit, the Environmental Services Division will collect all pertinent information sufficient to support the complaint, and provide the information to the City Attorney. The Environmental Services staff will support the City Attorney in preparing and carrying out the enforcement case.

Criminal Actions

Willful or negligent violations can seriously damage the POTW and the environment, and must be punished severely. As in civil actions the Environmental Services Division and the Water Utilities Department will work closely with the City Attorney's office.

The City Prosecutor is authorized to seek criminal punishment for any person who violates pretreatment standards or any person who knowingly makes a false statement regarding any report, application, record, or other document required by the General Pretreatment Regulations and Tempe City Code.

Enforcement Response Plan

The Environmental Services Administrator will consider several factors when identifying violations to be referred to the City Prosecutor for possible criminal prosecution. These factors include:

- The apparent willfulness or negligence of the violation
- Knowledge of the violation
- Nature and seriousness of the violation
- Need for deterrence
- Compliance history of the facility

Suspension or Revocation of Permit

A facility's Industrial Wastewater Discharge Permit may be revoked if any provision of the Permit or Tempe City Code is violated or for any of the reasons listed in Tempe City Code 27-46. A Permit may be modified including, but not limited to, the following reasons:

- To incorporate any new or revised Federal, State, or local pretreatment standard or requirement.
- Material or substantial alterations or additions to the facility's operation processes, discharge volume, or character which were not covered in the effective permit.
- A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- Information indicating that the permitted discharge poses a threat to the City's collection and treatment system, POTW personnel, or the receiving water.
- Obtaining a Permit by misrepresentation or failure to disclose fully all relevant facts.
- Revision of a grant of variance from categorical standards pursuant to Title 40 CFR 403.13.

Significant Non-Compliance (SNC)

Significant Non-Compliance (SNC) is determined by a compliance assessment at the end of each quarter, using a six-month period which includes the present quarter and the previous quarter. Any one of the following situations will be considered SNC:

- A. Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all the measurements taken during a six-month period exceed, by any magnitude, the daily maximum limit or the average limit for the same pollutant parameter;
- B. Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all or the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);
- C. Any other violation of a pretreatment standard, daily maximum or longer-term average, that the Water Utilities Manager determines has caused, alone or in combination with other discharges, interference, or pass-through, including endangering the health of POTW personnel or the general public;
- D. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge;
- E. Failure to meet, within 90 days after the due date, a compliance schedule milestone contained in a permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- F. Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90 day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- G. Failure to accurately report noncompliance; or
- H. Any other violation or group of violations, which the Water Utilities Manager determines will adversely affect the operation or implementation of Tempe City Code Chapter 27.

Enforcement Response Plan

When it is determined that an industrial user is in SNC, the City of Tempe will take the following actions as required by 40 CFR 403.8:

1. Annually publish the name of the facility that is determined to be in SNC, in the largest daily newspaper serving the City of Tempe;
2. Report the occurrence to the Environmental Protection Agency, Region 9, in the Pretreatment Performance Summary (Annual Report) as required by NPDES Permit No. AZ0020524; and
3. Take appropriate enforcement actions.

Guidance for Appendix A

The sections that follow are intended to be used as guidance for assessing fair and uniform enforcement.

1. Determine the type of noncompliance that has occurred in Appendix A.
2. Using Appendix A, “Nature of the Violation”, identify the most accurate description of the instance(s) of noncompliance.
3. Determine the appropriateness of the recommended response(s) in Appendix A, Enforcement Response. Instances of initial noncompliance or those demonstrating good faith efforts may, upon the discretion of the Environmental Services Administrator, receive a more lenient response. Similarly, repeat offenders or those demonstrating willful conduct may require a more severe response. The City of Tempe may use higher levels of enforcement against recalcitrant facilities.
4. The rationale for the enforcement response must be documented and placed in the facility’s file.
5. Apply the enforcement response to the facility. Specify required actions or the response required of the facility.
6. Document facility responses and resolution of noncompliance.
7. Follow-up with escalated enforcement action if the facility response is not received or if the violation(s) continue.

Timeframes for Responses

- Initial enforcement responses (contacting the facility and requesting information on corrective or preventative actions) will occur within thirty (30) days of violation detection.
- Violations which threaten health, property, or environmental quality are considered emergencies and will receive immediate responses, such as halting the discharge, or terminating sewer service.
- Unless otherwise specified, evaluation period is for one (1) year from date of violation.

APPENDIX A

I. Un-permitted Discharge

<u>Noncompliance</u>	<u>Nature of Violation</u>	<u>Enforcement Response</u>
Un-permitted Discharge	IU aware of requirement; No harm to POTW/Environment	<ul style="list-style-type: none"> • Informal Notice • NOV with permit application form
	IU aware of requirement; harm to POTW/Environment	<ul style="list-style-type: none"> • Administrative Fines • Civil Action
	Failure to comply; continues after notice by the City	<ul style="list-style-type: none"> • Civil Action • Criminal Action • Terminate Discharge
Non-permitted Discharge (Failure to renew)	Permit expired; no application submitted	<ul style="list-style-type: none"> • NOV • AO • Civil Action • Criminal Action • Terminate Discharge

APPENDIX A

II. Discharge Limit Violation

<u>Noncompliance</u>	<u>Nature of Violation</u>	<u>Enforcement Response</u>
Exceedance of Local or Federal Standard (Permit Limit)	Isolated, no harm to POTW or environment	<ul style="list-style-type: none"> • Informal Notice • NOV • Automatic re-sampling • Unannounced inspection • Unannounced City monitoring
	Isolated, harm to POTW or environment	<ul style="list-style-type: none"> • Show Cause • Civil Action
	Recurring, 2 or more violations within 90 days, no harm to POTW or environment	<ul style="list-style-type: none"> • Administrative Fines
	Recurring, 2 or more violations within 90 days, harm to POTW or environment	<ul style="list-style-type: none"> • Show Cause • Administrative Fines • Civil Action • Terminate Discharge • Revoke Permit
	Recurring, with knowledge or intent or negligence	<ul style="list-style-type: none"> • Criminal Action

APPENDIX A

III. Monitoring and Reporting Violations

<u>Noncompliance</u>	<u>Nature of Violation</u>	<u>Enforcement Response</u>
Reporting Violation	Report is improperly signed or certified	<ul style="list-style-type: none"> • Informal Notice • NOV
	Report is improperly signed or certified after notice by the City	<ul style="list-style-type: none"> • Show Cause • Administrative Fines
	Isolated, not significant, less than 5 days late	<ul style="list-style-type: none"> • Informal Notice • NOV
	Any single report 5 days or more late	<ul style="list-style-type: none"> • Show Cause • Administrative Fines • Civil Action
	Failure to report spill or changed discharge; no harm	<ul style="list-style-type: none"> • NOV
	Failure to report spill or changed discharge; harm to POTW or environment	<ul style="list-style-type: none"> • Administrative Fines • Civil Action
	Repeated failure to report spills	<ul style="list-style-type: none"> • Show Cause • Terminate Discharge • Revoke Permit
	Falsification	<ul style="list-style-type: none"> • Criminal Action • Terminate Discharge • Revoke Permit
	Missing or incomplete information	<ul style="list-style-type: none"> • Informal Notice • NOV
	Failure to correct report with missing or incomplete information	<ul style="list-style-type: none"> • Show Cause • Administrative Fines • Civil Action

APPENDIX A

III. Monitoring and Reporting Violations (cont)

<u>Noncompliance</u>	<u>Nature of Violation</u>	<u>Enforcement Response</u>
Failure to Monitor Correctly	Failure to monitor all pollutants as required by permit	<ul style="list-style-type: none"> • NOV • AO
	Recurring failure to monitor	<ul style="list-style-type: none"> • Show Cause • Administrative Fines • Civil Action
Improper Sampling	Evidence of intent	<ul style="list-style-type: none"> • Criminal Action • Terminate Discharge • Revoke Permit
Failure to install monitoring equipment	Delay of less than 30 days	<ul style="list-style-type: none"> • NOV
	Delay of more than 30 days	<ul style="list-style-type: none"> • Administrative Fines
	Recurring violation of AO	<ul style="list-style-type: none"> • Civil Action • Criminal Action • Terminate Discharge
Compliance Schedules	Missed milestones	<ul style="list-style-type: none"> • NOV • Administrative Fines
	Missed milestones, more than 30 days (good cause for delay)	<ul style="list-style-type: none"> • Administrative Fines
	Missed milestones, more than 30 days (no good cause for delay)	<ul style="list-style-type: none"> • Show Cause • Civil Action • Terminate Discharge
	Recurring violation or violation of schedule in AO	<ul style="list-style-type: none"> • Civil Action • Criminal Action • Terminate Discharge • Revoke Permit

APPENDIX A

IV. Other Permit Violations

<u>Noncompliance</u>	<u>Nature of Violation</u>	<u>Enforcement Response</u>
Waste streams are diluted in lieu of treatment	Initial Violation	<ul style="list-style-type: none"> • Administrative Fines
	Recurring	<ul style="list-style-type: none"> • Show Cause • Civil Action • Terminate Discharge • Revoke Permit
Failure to mitigate noncompliance or halt production	No harm to POTW or environment	<ul style="list-style-type: none"> • NOV • Terminate Discharge • Revoke Permit
	Harm to POTW or environment	<ul style="list-style-type: none"> • Administrative Fines • Civil Action • Terminate Discharge • Revoke Permit
Failure to properly operate and maintain pretreatment facility	Initial Violation	<ul style="list-style-type: none"> • NOV
	Recurring	<ul style="list-style-type: none"> • Administrative Fines • Civil Action • Terminate Discharge • Revoke Permit

APPENDIX A

V. Violation Detected During Site Visit

<u>Noncompliance</u>	<u>Nature of Violation</u>	<u>Enforcement Response</u>
Entry Denial	Entry denied or consent withdrawn. Copies of records denied	<ul style="list-style-type: none"> • Obtain Warrant • Show Cause
Illegal discharge	No harm to POTW or environment	<ul style="list-style-type: none"> • Administrative Fines
	Discharge causes harm to POTW or evidence of intent/negligence	<ul style="list-style-type: none"> • Civil Action • Criminal Action
	Recurring	<ul style="list-style-type: none"> • Terminate Discharge
Improper Sampling	Incorrect location, sample type, collection procedures	<ul style="list-style-type: none"> • NOV
Inadequate recording keeping	Files incomplete or missing information – Initial Violation	<ul style="list-style-type: none"> • NOV
	Recurring, after notice to correct	<ul style="list-style-type: none"> • Show Cause • Administrative Fines
Failure to report additional monitoring	Inspector finds additional files/records – Initial Violation	<ul style="list-style-type: none"> • NOV
	Recurring, after notice to remedy	<ul style="list-style-type: none"> • Show Cause • Administrative Fines • Civil Action • Criminal Action • Terminate Discharge

Penalty Policy

This penalty policy is adopted pursuant to Tempe City Code Section 27-95. The policy establishes the factors to be considered and the method for calculating administrative fines.

A. General Provisions

- 1) The penalty associated with violations should reflect the seriousness, frequency, duration, and persistence of the violation(s), the economic benefit resulting from the violation, the economic impact of the penalty on the violator, the facility's compliance history, apparent good faith, and other factors as justice requires. A mathematical method has been developed to compute the penalty amount for pollutant violations and reporting violations. Any costs resulting from the violation(s) (such as sampling, analysis, investigation) and/or any damage to the environment or the City's sewer system is an additional charge which will be billed to the violator.
- 2) The concept of a penalty is that the violator should not be allowed to enjoy any economic benefit from having been in violation and should be caused to suffer economically. Once the penalty is computed, the amount may be increased or decreased due to recalcitrance, litigation costs, and/or ability to pay.
- 3) The Water Utilities Manager imposes the penalties provided herein by Administrative Order, which provides that the violator may request a hearing if a written request is made within ten (10) days of receiving the Administrative Order. The written request must specify the issues and/or grounds upon which a review hearing is requested.

B. Violations of Permit Conditions

The penalty for violation of permit conditions is a maximum fine per violation per day of \$2,500.00.

For failure to perform an analysis required by permit, the amount should generally be double the cost saved. The following penalty amounts should be considered minimum, and represent the normal penalty for failure to do the analysis required:

1) Metals analysis	\$200.00
2) Cyanide	\$100.00
3) TTO	\$1,500.00

C. Late reports

The penalty for a late report is as follows:

<u>Number of Days a Report is Late</u>	<u>Amount</u>
6 – 30	\$50.00/per day
31 – 60	\$100.00/per day
61 – 90	\$150.00/per day
91 – 180	\$200.00/per day
180	\$400.00/per day

D. Discharge Limit Violations and Reporting Violations

The base penalty for late or missing reports and violations of discharge limitations is computed from the formula: **Monetary Penalty = \$100 x (1 + Factor A + Factor B + Factor C + Factor D) x (Factor E)**. For each violation, a separate calculation is performed per day. The formula represents a base amount which shall be multiplied by a sum of factors as determined from the Magnitude of Components set forth in subparagraphs one (1) through five (5) below:

Enforcement Response Plan

1.

FACTOR A **SIGNIFICANCE OF VIOLATION**

Factor A = 0 to 10

% Exceedance of Daily or <u>Slug Limit</u>	% Exceedance of Average <u>Limit</u>	<u>Factor A</u>
NA	NA	0
1 – 50	1 – 20	1
51 – 100	21 – 40	2
101 – 200	41 – 100	3
201 – 600	101 – 300	4
601 – 1000	301 – 500	5
1001 – 2000	501 – 1000	6
2001 – 3000	1001 – 1500	7
3001 – 4000	1501 – 2000	8
4001 – 5000	2001 – 2500	9
> 5000	> 2500	10

<u>pH Violations (Standard Units)</u>		<u>Factor A</u>
4.0 – 4.99	10.51 – 10.99	0
3.0 – 3.99	11.0 – 11.99	1
< 3.0	> 11.99	4

pH Violation - If the exceedance does not last for a period of 15 minutes or more cumulative per day, the Environmental Services Administrator may determine what enforcement actions, if any, to take as described in this Enforcement Response Plan, provided the facility can establish the duration and cause of the exceedance. Any exceedance shall be reported as required by Tempe City Code Chapter 27 and the user's permit.

2.

FACTOR B
HEALTH AND ENVIRONMENTAL HARM OR POTENTIAL HARM

Factor B = 0 to 10

Discharge Volume (gallons per day)	Health Effects*	Aquatic or Sludge
< 10,001	0.2	0.1
10,001 to 25,000	0.4	0.2
25,001 to 50,000	0.8	0.4
50,001 to 100,000	1.2	0.6
100,001 to 250,000	2	1
250,001 to 300,000	3	2
300,001 to 350,000	4	4
350,001 to 400,000	5	5
400,001 to 450,000	6	6
450,001 to 500,000	7	7
500,001 to 550,000	8	8
550,001 to 600,000	9	9
> 600,000	10	10

* Applies to pH, chromium, cyanide, sulfides, residual chlorine, VOC's or any other material posing a threat to workers in the sewer system or the public.

3.

FACTOR C
NUMBER OF VIOLATIONS

Factor C = 0 to 2.5

This factor accounts for the number of violations occurring in a given month, or frequency of the violations. For violations of both an average limit and daily limit(s), the same factor should be applied to each computation.

Determine the percentage of the number of days that had measurements which were violations and multiply this percentage by 2.5. Repeat this calculation for the average limit and then add the two results to arrive at a factor.

$(\text{Number of days with a violation}) / (\text{Number of days measured in the month}) \times 2.5 = \text{Factor C}$

4.

FACTOR D
DURATION OF NON-COMPLIANCE

Factor D = 0 to 5

This factor accounts for the number of months in violation during the previous six months. Using a rolling 6 months, this factor is the number of months in violation minus 1.

If the facility had violations for each of the previous 6 months then the factor is 5.

5.

FACTOR E
OTHER FACTORS

Other factors deemed important by the Water Utilities Manager include recalcitrance, history of violations, good faith, litigation costs, and ability to pay. If there are no other factors deemed important, then Factor E = 1.